U. S. Department of Justice
Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

March 30, 1995

The Honorable Charles R. Richey
U.S. Courthouse
Third Street and Constitution Ave., N.W.
Washington, D.C. 20001

Re: United States v. Browning-Ferris Industries, Inc.,
Case No.:1:94CV02588

Dear Judge Richey:

The Court has requested that the United States provide proposed findings in support of the Court's determination that the entry of the proposed Final Judgment in the above-captioned case is in the public interest. While the United States has complied with the Court's request, it believes the record in this case is more than adequate for the Court to make its public interest determination pursuant to the Antitrust Procedures and Penalties Act ("APPA"). See 15 U.S.C. §16(f).

The Court may properly make its public interest determination solely on the basis of the Competitive Impact Statement and Responses to Comments filed pursuant to the APPA.

> "[A]bsent a showing or corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact

> statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."

United States v. Mid-American Dairymen, Inc., 1977-1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977). Moreover, precedent requires that, in making the public interest determination:

> "the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree."

United States v. Bechtel, 648 F.2d at 666 (citations omitted)(emphasis added); see United States v. BNS, Inc., 858 Supp. 1127, 1143 (C.D. Cal. 1978); United States v. Gillette Co., 406 F. Supp. at 716. See also United States v. American Cyanamid Co., 719 F.2d at 565. The D.C. Circuit has adopted this standard in U.S. v. Western Electric Co., 900 F.2d 283 (D.C. Cir. 1990).

For these reasons, we believe the Government's Competitive Impact Statement, filed on December 2, 1994, and it Comments on the Proposed Final Judgment and the United States' Responses to the Comments, filed on March 2, 1995, provide an adequate basis for the Court to make its public interest determination.

Respectfully submitted,

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